IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972

No. _____

GEORGE L. MOORE,

Petitioner,

v.

THE BOARD OF TRUSTEES OF CARSON-TAHOE HOSPITAL, a Public Hospital, and WILLIAM E. SCHULTZ, WILLIAM A. YOUNG, L. GENE GOLD, JOSEPH N. LITTLEFIELD, MARY O. KNAPP, and WILLIAM R. KING, constituting the members of said Board.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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July 31, 1972

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PETITION FOR A WRIT OF CERTIORARI
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THE STATE OF NEVADA

The petitioner, GEORGE L. MOORE, prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of the State of Nevada rendered in these proceedings on April 6, 1972 and made effective by order of the Supreme Court of Nevada on May 3, 1972.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Nevada is reported at 88 Nevada Advance Opinion 55, 495 P.2d 605 (1972) and appears at Appendix A, infra, pp. i - xiv. The opinion of the First Judicial District Court of the State of Nevada is unreported, and appears at Appendix B, infra, pp. xv - xix. The decision of the Board of Trustees of Carson-Tahoe Hospital is unreported and appears at Appendix C, infra, pp. xx - xxxiv.

JURISDICTION

The order or judgment of the Supreme Court of the State of Nevada became effective on May 3, 1972. See Appendix F, infra, xliv - xlv. This

petition for certiorari was filed less than 90 days from the date aforesaid.

The federal question was raised as indicated in the Opinion of the Supreme Court of the State of Nevada as appears at Appendix A, infra.

A timely petition for rehearing was denied on May 3, 1972, three days after its filing as appears at Appendix F, infra, pp. xliv-xlv.

The jurisdiction of this Court is invoked under 28 U.S.C. and § 1257 (3).

QUESTIONS PRESENTED

The Board of Trustees of Carson-Tahoe Hospital, a county public hospital, revoked the medical staff privileges of the petitioner, a duly licensed and qualified physician and surgeon on the basis that two incidents, one involving the failure to wear rubber gloves while administering an anesthetic, and the other involving petitioner's acquiescence in the suggestion by two other doctors that he should postpone a scheduled surgery constituted "unprofessional conduct." While the hospital bylaws authorized termination of staff privileges for "unprofessional conduct", nowhere either in the bylaws or elsewhere was the term "unprofessional conduct" defined, explained, amplified, or otherwise mentioned. Under the circumstances,

was the petitioner deprived of rights protected by the Due Process Clause of the Fourteenth Amendment:

1. In that he was excluded from the only hospital in the area where he maintained his practice under a bylaw provision which was so indefinite and vague, as to afford no ascertainable standard of conduct or medical practice requiring those affected to guess at its meaning and differ as to its application;

2. In that he was excluded from the hospital and thus the bulk of his medical practice on a record barren of any evidence of danger or harm to his patients or the hospital or of willful violation of any bylaw, rule, regulation, or necessary medical procedure.

3. In that his medical staff privileges were taken away for actions which have no rational connection with his fitness or capacity to practice medicine in the hospital.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

> "nor shall any state deprive any person of life, liberty, or property, without due process

of law."

The applicable bylaw provision under which petitioner was removed from the medical staff provides as follows:

(Article 4)

"Section 5: Review of Privileges. A member of the Medical Staff who violates any rule, or who is guilty of unprofessional conduct, may have his privileges reviewed (,) altered or rescinded by the Board of Trustees on recommendation of the Medical Staff, such action being initiated by the Executive-Credentials Committee, and recommendations made by the Medical Staff."

This case further involves Nevada Revised Statutes 630.030. This is reprinted in Appendix D, infra, pp. xxxv - xxxvii.

STATEMENT OF FACTS

The facts relevant to the question presented by this petition are uncontroverted and therefore may be introduced to the Court in a summary fashion.

Plaintiff is a physician and surgeon duly licensed by the State of Nevada, certified by the American Board

of Obstetrics and Gynecology and a Fellow of the American College of Surgeons and of the American College of Obstetricians and Gynecologists.

He taught obstetrics and gynecology at Baylor Medical School and practiced in Houston, Texas prior to his moving to Carson City in 1965. He has practiced medicine, specializing in obstetrics and gynecology, since 1965 and has been a full member of the active medical staff at Carson-Tahoe Hospital since that time.

On July 31, 1969, the Board of Trustees of Carson-Tahoe Hospital terminated the right of plaintiff to practice in Carson-Tahoe Hospital, a public hospital, and the only hospital in Carson City, Nevada or in the immediate vicinity.

Plaintiff then instituted legal proceedings and his right to practice was reinstated by the First Judicial District Court of the State of Nevada until such time as formal charges were filed against him and he was given an opportunity to defend himself before the Board.

Thereafter, plaintiff was charged, by registered letter, with 12 different alleged violations, occurring between the years 1965 through 1969, alleged to be "unprofessional conduct".

A hearing was ultimately

held on the merits concerning these charges, resulting in ten of the charges being dropped for lack of proof. However, the Board found evidence that appeared to substantiate two of the charges, to wit: failure to use rubber gloves, on July 26, 1969, and abiding by the judgment of Drs. King and Hines that he should not perform surgery on July 28, 1969.

The Board, on February 19, 1970, by a vote of 3 - 2, decided to terminate Dr. Moore's staff privileges on grounds of "unprofessional Conduct" based upon the two incidents. (Appendix C, infra, pp. xx-xxxiv.

While the bylaws of the hospital do allow removal from the medical staff for "unprofessional conduct", the term "unprofessional conduct" is nowhere defined or explained in the said bylaws.

Two members of the Board of Trustees joined in a dissent as appears at Appendix C, infra, pp. xxxi - xxxiv.

Plaintiff subsequently filed in the State District Court an application for a Writ of Mandate and for a temporary restraining order. By stipulation of the parties, this matter was submitted on the record, together with briefs. The trial court denied the writ and injunctive relief and from that order plaintiff filed an appeal with the Nevada Supreme Court, which

entered an order staying execution of the order of the Board of Trustees pending the appeal.

On April 6, 1972 the Nevada Supreme Court filed its opinion affirming by a vote of 3 - 2, the judgment of the trial court. On May 3, 1972, the Nevada Supreme Court entered its order denying rehearing, vacating its stay order, and issuing the remittitur.

The federal questions raised here were presented to the First Judicial District Court by pleading such question in the original complaint for injunctive relief prior to hearing as appears in pertinent part in Appendix E, infra, pp. xl - xli, and in the petition for a Writ of Mandate filed after hearing, as appears in pertinent part in Appendix E, infra, p. xlii, and in the legal issues presented in the briefs to the District Court as appear in Appendix E, infra, p. xliii. The judgment of that court made conclusions of law ruling upon the constitutional questions as appears in Appendix B, infra, pp. xv - xviii, paragraphs 2, 3 and 4.

Similarly, the federal questions were raised in the Nevada Supreme Court by specification of legal issues presented in Dr. Moore's Opening Brief, as appears in Appendix E, infra, pp. xxxviii - xl. The opinion of the Nevada Supreme Court clearly reflects a

specific ruling on these issues, and the dissent is based upon such substantial federal due process questions as appears in Appendix A, infra, pp. i - xiv.

REASONS FOR GRANTING THE WRIT

A. Petitioner has virtually been excluded from the practice of medicine under a bylaw provision of a public hospital which on its face and as applied to petitioner is so vague, indefinite, and uncertain as to offend the due process clause of the Fourteenth Amendment as construed in applicable decisions of this Court.

The charges against petitioner accused petitioner of having been guilty of unprofessional conduct. The Board of Trustees of Carson-Tahoe Hospital found that petitioner did not wear rubber gloves while administering an anesthetic as is the usual practice and that petitioner postponed scheduled surgery voluntarily upon the suggestion of two of his associates that he was in no physical condition to immediately proceed. These two incidents, in the opinion of three members of the Board, constituted "unprofessional conduct" and justification to revoke all staff privileges of petitioner.

As has been stated in the preceding section of this petition, no definition or amplification of the term

"unprofessional conduct" is to be found in the hospital bylaws. The only other application of such a standard in the State of Nevada can be found in NRS 630.030, as appears in Appendix D, infra, pp. xxxv - xxxvii, and in Boswell v. Board of Medical Examiners, 72 Nev. 20, 293 P.2d 424 (1956). However, the courts below refused to apply the statutory definition but instead held that the term "unprofessional conduct" was a sufficiently objective standard. While the legislature of the State deemed it essential to define "unprofessional conduct" to guard against discriminatory action by the Board of Medical Examiners, the Nevada Supreme Court has found that such a definition is not essential to protect a hospital staff member from arbitrary conduct by a hospital governing body. But the Board of Trustees is clothed with almost unlimited power, susceptible of abuse.

In this case, as in Schware v. Board of Bar Examiners, 353 U.S. 232, 238-239, 77 S. Ct. 752, 1 L.Ed. 796 (1957), an arbitrary standard has been applied to exclude a person from the practice of his profession. In this case, as in Schware, the application of such a standard contravenes the Due Process Clause.

The term "unprofessional conduct", much like the term "good moral character", ". . . by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways

for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice . . ." Konigsberg v. State Bar, 353 U.S. 252, 262-263, 77 S. Ct. 722, 1 L. Ed. 810 (1957).

The standard established by the decision of the Nevada Supreme Court only emphasizes the potential abuse and ad hoc application of such a vague standard as "unprofessional conduct". To allow a standard for revocation to be established after the fact by three witnesses as the Nevada Supreme Court accepts, is prima facie contradictory to the previous dictates of this Court that our Constitution cannot allow a State to require conduct in such terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. Baggett v. Bullitt, 377 U.S. 360 (1963); Connally v. General Construction Co., 269 U.S. 385; Lanzett v. New Jersey, 306 U.S. 451; United States v. Cardiff, 344 U.S. 174; Champlin Refining Co. v. Corporation Comm'n of Oklahoma, 286 U.S. 210.

The real unfairness and potential danger of the undefined standard of "unprofessional conduct" as applied by the Nevada Supreme Court is

that every physician is forced to abandon his own medical judgment in favor of conformity, for if three witnesses testify that any medical procedure is a deviation from the normal practice, a prima facie case of "unprofessional conduct" has been proven justifying termination of hospital privileges.

Similarly, under the Nevada Supreme Court test, any two physicians can tell a surgeon that he shouldn't perform surgery because of his physical condition, and regardless of whether the surgeon acquiesces in that judgment or not, he, per se, is guilty of "unprofessional conduct", justifying loss of all hospital privileges.

B. The decision below affirms the expulsion of a qualified physician from the hospital staff based upon no evidence of harm, damage, wrongdoing, or violation of any rule, regulation or bylaw and conflicts with this Court's decision in Thompson v. City of Louisville, 362 U.S. 199.

The findings of the hospital Board of Trustees amply demonstrate the evidence of "guilt" regarding petitioner's non-use of rubber gloves:

> ". . . the very fact that the procedure used by Dr. Moore in this situation was different than he or any other Doctor on this staff has ever used is evidence

enough that Dr. Moore was in error."

Similarly, the evidence supporting the inability to perform surgery is fairly stated in the same findings:

"Evidence clearly indicated that Dr. George Moore appeared at the hospital to perform surgery when he was in no condition to do it. This Dr. Moore admitted to himself when he abided by the decision of his fellow doctors without comment. Had Dr. Moore not been refrained from doing surgery he probably would have gone ahead. There naturally can be no evidence to indicate what might have happened. Evidence is ample in this situation to support and sustain the charge."

If the evidence does not support the charge of "unprofessional conduct", even assuming a broad definition of that standard, a revocation of staff privileges is void as a denial of due process. Thompson v. City of Louisville, 362 U.S. 199 (1959).

Enormous conclusions were injected into the findings of the Board, however. Despite the fact that the procedure performed without rubber gloves was completely without injury to the patient, the majority of the Board equated a deviation from the usual to error. And despite the complete

cooperation of the petitioner with his fellow doctors, an explanation of his physical condition, and the agreement by all three doctors for a rescheduling of the surgery for the same day, the majority of the Board engaged in speculation as to results of the unperformed surgery to find error.

Since there is no evidence beyond differing medical judgment and full cooperation, the record is barren of any evidence of culpability or "unprofessional conduct". It is a violation of due process to judge and deprive a physician of his profession without evidence of any act which caused injury to a patient or cast dishonor upon the profession. Schware v. Board of Bar Examiners, supra, at 239.

C. The acts found by the Board of Trustees to be the basis for termination of hospital staff privileges have no rational connection with petitioner's fitness or capacity to practice medicine in the hospital.

Just as a qualification for admission to the bar must have a rational connection with an applicant's fitness or capacity to practice law, qualifications or standards to be admitted or to continue the practice of medicine must have the same rational connections. Schware v. Board of Bar Examiners, supra, at 239.

The use of an unusual medical procedure with success or abiding by a decision of fellow doctors cannot have a rational connection to petitioner's fitness or capacity to practice medicine.

D. The issues presented here, and particularly the interpretation of the standard of "unprofessional conduct" have been and continue to be a constant source of litigation in need of clarification by this Court.

The cases are legion involving admission to or termination from hospital medical staffs. See generally The Physician's Right to Hospital Staff Membership: The Public-Private Dichotomy, 1966 Wash. Univ. Law Q, 485 (1966); Horty, II Hospital Law Manual, Medical Staff, pp. 1-19; Southwick, Hospital Medical Staff Privileges, 18 DePaul L. Rev. 655 (1969).

Litigation has arisen both in state courts and in Federal Courts under the Civil Rights Act. See Citta v. Delaware Valley Hospital, 313 F. Supp. 301 (D.C.E.D. Pa. 1970); Mizell v. North Broward Hospital District, 392 F.2d 580 (5th Cir. 1968), and 427 F.2d 468 (5th Cir. 1970); Meredith v. Allen County War Memorial Hospital Commission, 397 F.2d 33 (6th Cir. 1968).

The questions presented here are of significant importance and have never been before ruled upon by this

Court. Substantial guidance to both state and Federal courts would result by consideration of these issues at this time.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for certiorari be granted.

Respectfully submitted,

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Counsel for Petitioner.

APPENDIX A

IN THE SUPREME COURT OF
THE STATE OF NEVADA

GEORGE L. MOORE, Appellant, vs. THE BOARD OF TRUSTEES OF CARSON-TAHOE HOSPITAL, a Public Hospital, and WILLIAM SCHULTZ, WILLIAM YOUNG, GENE GOLD, JOSEPH LITTLEFIELD, and MARY GIALY, constituting the members of said Board, Respondents.	No. 6684

Appeal from order of the First Judicial District Court, Carson City; Richard L. Waters, Jr., Judge.

Affirmed.

Carl F. Martillaro, of Carson City, for Appellant.

Michael E. Fondi, District Attorney, and Laxalt, Berry & Allison, of Carson City, for Respondents.

OPINION

By the Court, MOWBRAY, J.:

The appellant, George L. Moore, is a doctor of medicine and is licensed to practice in the State of Nevada. He also enjoyed medical staff privileges at the Carson-Tahoe Hospital until they were terminated on February 19, 1970, by action of the Hospital Board of Trustees. Doctor Moore filed a petition in the district court seeking a writ of mandate in an effort to force the Board to restore his medical staff privileges. The district judge denied his request and hence this appeal.

The issues presented for our consideration may be summarized under two headings: (1) Is the action of a governing board of a public hospital arbitrary, capricious, and unreasonable when it terminates the medical staff privileges of a physician on the grounds of unprofessional conduct, where the acts constituting the conduct complained of are not expressly defined and prohibited in the bylaws, rules, and regulations promulgated by the hospital? (2) Is there sufficient evidence in this case to support the findings of the Board?

1. Doctor Moore was charged with 12 alleged acts of unprofessional conduct, and he was found guilty of Charges Nos. 7 and 11 of the complaint.

Those charges read as follows:

"7. On or about July 26, 1969, you attempted to administer to an O.B. patient, ready to deliver a baby, a spinal anesthetic without benefit of sterile technique in that you prepared the medication, performed a minimal skin preparation and placed your fingers on the spinal needle, all without wearing sterile gloves. Additionally, you attempted the spinal puncture several times, all attempts being unsuccessful."

"11. On or about July 28, 1969, you had a meeting with the Chief of Staff, Doctor Thomas Hines, and Doctor William King, at approximately 7:30 a.m. in the morning, after which Doctor Hines, with the concurrence of Doctor King, cancelled certain surgery you had scheduled on the basis that you were in no condition physically or mentally to perform surgery."

2. The Carson-Tahoe Hospital is a public hospital and is governed by the provisions of NRS 450.010 through 450.700. NRS 450.160 provides as follows:

"The Board of hospital trustees shall make and adopt such bylaws, rules and regulations for its own guidance and for the government of the hospital, and such rules and regulations governing the admission of physicians to the staff, as may be deemed expedient for the economic and

equitable conduct thereof, not inconsistent with NRS 450.010 to 450.510, inclusive, or the ordinances of the city or town wherein such hospital is located."

NRS 450.180, subsection 4, further provides:

"The Board of hospital trustees shall have the power:

". . .

"4. To control the admission of physicians, surgeons and internes to the staff by promulgating appropriate rules, regulations and standards governing such appointments."

The Hospital Board of Trustees as the governing body of the institution, promulgated bylaws, rules, and regulations designed to govern the medical staff of the Hospital.

NRS 450.440, subsection 1, provides:

"1. The board of hospital trustees shall organize a staff of physicians composed of every regular practicing physician in the county in which the hospital is located who meets the standards fixed by the rules and regulations laid down by the board of hospital trustees."

The delegated power to establish admission standards for medical staff members impliedly includes the power to continue to regulate membership after admission. It is axiomatic under the rule of statutory construction that a power conferred by statute necessarily carries with it the power to make it effective and complete. See Checker, Inc. v. Public Serv. Comm'n, 84 Nev. 623, 629-630, 446 P.2d 981, 985 (1968), citing Koelling v. Board of Trustees, 146 N.W.2d 284 (Iowa 1966).

Article 4, Section 5, of the Hospital's "By-Laws, Rules & Regulations Governing the Medical Staff" provides in part that any Medical Staff member "who is guilty of unprofessional conduct, may have his privileges reviewed (,) altered or rescinded by the Board of Trustees on recommendation of the Medical Staff." Doctor Moore was formally charged by a complaint that set forth with specificity in 12 counts the acts with which he was charged. He was present with counsel at all stages of the proceedings and was afforded the right of cross-examination of witnesses and the right to call witnesses in his own behalf. There is no procedural due process challenge presented in this case. Rather, Doctor Moore complains that he was denied substantive due process because the acts of which he was found guilty (numbered paragraphs 7 and 11 of the complaint) were not specifically proscribed in the Hospital's "By-Laws, Rules and Regulations

Governing the Medical Staff", and therefore they cannot constitute a predicate for the Board's conclusion that he was guilty of unprofessional conduct. We do not agree.

In North Broward Hosp. Dist. v. Mizell, 148 So. 2d 1 (Fla. 1962), the court held that the governing body of the hospital should be permitted certain discretion under the broad standard "(for) the good of the hospital or the patients therein," and that such words were essentially the same in meaning, when used in such context, as those used in other instances to authorize suspension for "unprofessional conduct." The court ruled that the particular bylaw provision set an objective standard upon which a board could act and by which a physician would have sufficient notice to guide him in his conduct. The court said, 148 So. 2d at 5:

"There is at least equal difficulty in precise definition of professional fitness for staff membership in any given institution . . . Detailed description of prohibited conduct is concededly impossible, perhaps even undesirable in view of rapidly shifting standards of medical excellence and the fact that a human life may be and quite often is involved in the ultimate decision of the board."

The Oregon Supreme Court, in a case involving a revocation of a

physician's license to practice medicine, said in In re Mintz, 378 P.2d 945, 948 (Oregon 1963):

". . .(T)he variety of forms which unprofessional conduct may take makes it infeasible to attempt to specify in a statute or regulation all of the acts which come within the meaning of the term. The fact that it is impossible to catalogue all of the types of professional misconduct is the very reason for setting up the statutory standard in broad terms and delegating to the board the function of evaluating the conduct in each case . . ."

If the standard "unprofessional conduct" is sufficiently objective in the case of a revocation of a physician's license to practice, it should be a sufficiently objective standard to guide a hospital board in acting upon the revocation of a physician's medical staff privileges in a community hospital.

Today, in response to demands of the public, the hospital is becoming a community health center. The purpose of the community hospital is to provide patient care of the highest possible quality. To implement this duty of providing competent medical care to the patients, it is the responsibility of the institution to create a workable system whereby the medical staff of the hospital continually reviews and evaluates the quality of care being rendered

within the institution. The staff must be organized with a proper structure to carry out the role delegated to it by the governing body. All powers of the medical staff flow from the board of trustees, and the staff must be held accountable for its control of quality. The concept of corporate responsibility for the quality of medical care was forcibly advanced in Darling v. Charleston Community Memorial Hosp., 211 N.E.2d 253 (Ill. 1965), wherein the Illinois Supreme Court held that hospitals and their governing bodies may be held liable for injuries resulting from imprudent or careless supervision of members of their medical staffs. The role of the hospital vis-a-vis the community is changing rapidly. The hospital's role is no longer limited to the furnishing of physical facilities and equipment where a physician treats his private patients and practices his profession in his own individualized manner.

The right to enjoy medical staff privileges in a community hospital is not an absolute right, but rather is subject to the reasonable rules and regulations of the hospital. Licensing, per se, furnishes no continuing control with respect to a physician's professional competence and therefore does not assure the public of quality patient care. The protection of the public must come from some other authority, and that in this case is the Hospital Board of Trustees. The Board,

of course, may not act arbitrarily or unreasonably in such cases. The Board's actions must also be predicated upon a reasonable standard.

In Selden v. City of Sterling, 45 N.E.2d 329 (Ill. App. 1942), the court ruled that the recommendation of the medical staff executive committee, based on the observations of its members of another physician's work, established a sufficient standard upon which to act in the granting of medical staff privileges. In the present case, Dorothy Haman, a nurse anesthetist, testified regarding Doctor Moore's unsuccessful attempts to administer the spinal anesthetic. She also testified regarding the procedure normally utilized. Dr. Thomas Hines testified that the procedure used by Doctor Moore substantially deviated from the accepted practice. Doctor King likewise testified. These three witnesses established the objective standard for administering spinal anesthetics. Doctor Moore failed to establish any other standard. Rather, he admitted deviating from the standard procedure but felt that he was justified in doing so. Doctors Hines and King testified that Doctor Moore was in no physical or mental condition to perform surgery that he had scheduled on the morning of July 28, 1969. Doctor Hines, in conference with Doctor Moore, so advised him, and it was agreed that the scheduled surgery be cancelled. No physician should perform surgery when he is not physically or

mentally fit to do so.

After reviewing the record, it is clear that the Board did not act arbitrarily in this case, or without a standard to guide it, and that the record does contain sufficient evidence to support the charge of violation of the standard of professional care required in such cases. Therefore, the judgment of the district court is affirmed.[1]

/s/ Mowbray, J.

We concur:

/s/ Zenoff, C.J.

/s/ Batjer, J.

[1] Of course, this ruling is not be be interpreted as barring forever Doctor Moore from seeking staff privileges at the Hospital. He may, if he wishes, at a later date submit his application for readmission to the Board for its consideration.

THOMPSON, J., with whom GUNDERSON, J., agrees, dissenting:

Dr. Moore, a Board certified physician and surgeon who specializes in obstetrics and gynecology, and is licensed to practice in Nevada, appeals from a judgment denying his petition for a writ of mandate to compel his admission to membership on the medical staff of Carson-Tahoe Hospital, a public hospital.[1] He was excluded from staff privileges for "unprofessional conduct" in that on one occasion he administered a spinal anesthetic without wearing sterile gloves, and on another occasion he had appeared at the hospital to perform surgery when in no condition physically or mentally to do so. The

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1 A doctor has a right to treat his patients in a public hospital so long as he conforms to the reasonable rules and regulations of the hospital. Findlay v. Board of Sup'rs of County of Mohave, 230 P.2d 526 (Ariz. 1951); Ware v. Benedikt, 280 S.W.2d 234 (Ark. 1955); Hamilton County Hospital v. Andrews, 84 N.E.2d 469 (Ind. 1949). And, of course, a writ of mandate may issue "to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded. . . ." NRS 34.160; State v. City of Parkersburg, 136 S.E.2d 783 (W. Va. 1964).

spinal anesthetic was administered without damage to the patient. Dr. Moore acquiesced in the postponement of the scheduled surgery and successfully performed the operation at a later time.

1. It is apparent that important rights and policies are involved. The effect of expulsion from a medical staff can be disastrous for it may follow the doctor to other areas and have the result of denying to a licensed physician qualified to practice in Nevada the right to fully exercise his profession. Conditions of modern medicine almost make it imperative that a doctor have a hospital in which he can practice. On the other hand, a hospital cannot function without its medical staff whose most important responsibility is to see that the staff members conform to certain standards which the community has the right to expect.

The Board of Hospital Trustees enjoys the power to control the admission of physicians to the staff by promulgating appropriate rules, regulations and standards (NRS 450.180(4); 450.440(1)) and concomitantly, possesses the power to exclude physicians who do not comply with appropriate rules thus promulgated. The "By-Laws, Rules and Regulations Governing the Medical Staff" promulgated by the Carson-Tahoe Board of Trustees, in relevant part, provide only that any Medical Staff member "who is guilty of

unprofessional conduct may have his privileges reviewed, altered or rescinded by the Board of Trustees on recommendation of the Medical Staff." One searches in vain for a description of "unprofessional conduct" even in general terms. Herein lies the difficulty with the instant matter. A hospital should not be permitted to adopt standards for the exclusion of doctors which are so vague and ambiguous as to provide a substantial danger of arbitrary discrimination in their application. Rosner v. Eden Township Hospital District, 375 P.2d 431 (Cal. 1962); Jacobs v. Martin, 90 A.2d 151 (N.J. Sup. 1952).

Our legislature has defined "unprofessional conduct" for the guidance of the Board of Medical Examiners in exercising its disciplinary powers. NRS 630.030; 630.300. A definition was deemed essential in order to guard against discriminatory action by the Board of Medical Examiners. A suitable definition is equally essential to protect a hospital staff member from arbitrary conduct by a Board of Hospital Trustees of a public hospital. Absent that definition, the Board is clothed with almost unlimited power, susceptible of abuse.

2. The acts for which Dr. Moore was expelled from the staff point to the need for a definition of "unprofessional conduct." His acquiescence in the request not to perform scheduled surgery was an act of

compliance rather than an act of disobedience. And, the administration of an anesthetic without sterile gloves can be no more than an isolated instance of negligence which did not result in injury or damage. Such an isolated act without injury can not be a reasonable basis for revocation of staff privileges, for if it is, and if enforced equally and without discrimination, medical staffs will disappear entirely. Every professional man errs from time to time.

3. The Board is concerned with its liability to third persons for the misconduct of its staff members. Darling v. Charleston Community Memorial Hospital, 211 N.E.2d 253 (Ill. 1965). This is a legitimate concern, but it possesses no relevance to the case at hand. Neither of the instances relied upon by the Board to justify the expulsion of Dr. Moore could possibly result in Board liability to others. Consequently, this concern of the Board points to the arbitrariness of its action rather than to a reason for sustaining it. Cf. Boswell v. Bd.Med.Ex. 72 Nev. 20, 293 P.2d 424 (1956).

The judgment should be reversed with directions to issue a writ of mandate compelling the Board to admit Dr. Moore to membership on the medical staff.

/s/ Thompson, J.

/s/ Gunderson, J.

APPENDIX B

IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GEORGE L. MOORE, Petitioner, vs. THE BOARD OF TRUSTEES OF CARSON-TAHOE HOSPITAL, a Public Hospital, and WILLIAM SCHULTZ, WILLIAM YOUNG, GENE GOLD, JOSEPH LITTLEFIELD, and LOTTIE SCOTT, constituting the Members of said Board, Respondents.	No. 29957

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-entitled cause having come on for hearing on February 17, 1970, before the Court without a jury, upon the application of the above-named petitioner, CARL MARTILLARO, ESQ., appearing for petitioner, and GEORGE ALLISON, ESQ., of LAXALT, BERRY

& ALLISON, appearing for respondents; and oral argument having been waived and the cause having thereupon been submitted to the Court for decision upon the record and written briefs submitted by both parties, the Court being fully advised now finds the following facts:

FINDINGS OF FACT

1. That petitioner, DR. GEORGE MOORE, is a duly licensed physician authorized to practice medicine under the laws of the State of Nevada and is a board certified obstetrician and gynecologist specialist.

2. That during the period of February 1, 1965 to March 12, 1970, Dr. Moore was actually engaged in the practice of medicine in Carson City, Nevada, and was at all times during said period an active member of the medical staff of Carson-Tahoe Hospital, Carson City, Nevada, which entitled him to full staff privileges in the use of said hospital.

3. That for all purposes herein, respondent, CARSON-TAHOE HOSPITAL, is a public hospital operated and governed by a duly elected Board of Trustees composed of five (5) members.

4. That at all times herein mentioned there existed medical staff by-laws adopted by the Board of Trustees of said Carson-Tahoe Hospital on October 22, 1964, which set forth the

procedure for any action involving termination of medical staff privileges.

5. That on July 30, 1969, following a meeting of the medical staff of Carson-Tahoe Hospital said medical staff submitted a written recommendation to the Board of Trustees recommending that the staff privileges of George L. Moore, be immediately terminated, due to unprofessional conduct.

6. That on August 20, 1969, Dr. Moore was informed in writing of the charges of unprofessional conduct made against him and that an administrative hearing as to the extent and basis of the allegations would be held.

7. That a hearing before the Board of Trustees on the charge of unprofessional conduct was conducted on November 25, 1969, December 3, 4 and 6, 1969.

8. That on February 20, 1970, petitioner's medical staff privileges were terminated by a majority vote of the Board of Trustees.

CONCLUSIONS OF LAW

1. That the Board of Trustees of a public hospital is legally vested with discretionary power to terminate the medical staff privileges of a member of the medical staff upon sufficient evidence and a fair hearing process.

2. That the Board of Trustees in exercising its termination discretion is not limited solely to consideration of violations of specific written hospital regulations or by-laws, or state laws, and that the Board of Trustees is in addition necessarily vested with the authority to make a determination as to whether alleged specific instances of misconduct of a physician on the hospital medical staff constitutes "unprofessional conduct."

3. That there is sufficient evidence to support the decision of the Board of Trustees of Carson-Tahoe Hospital that the petitioner was guilty of unprofessional conduct and that petitioner was accorded a fair hearing in accordance with accepted standards of procedural due process.

4. That the Board of Trustees did not act arbitrarily or in abuse of its discretion or in excess of its jurisdiction.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the application for an alternate writ of mandate and temporary restraining order restraining respondents from preventing petitioner from exercising his medical staff privileges at Carson-Tahoe Hospital be, and hereby are, dismissed and the said alternate writ and temporary restraining order previously issued are hereby

dissolved.

2. That the Board of Trustees' decision terminating petitioner's medical staff privileges be given immediate effect as adopted and promulgated heretofore.

DATED this 30th day of June, 1971.

/s/ Richard L. Waters, Jr.
DISTRICT JUDGE

APPENDIX C

CARSON-TAHOE HOSPITAL
Carson City

January 10, 1970

IN THE MATTER OF DR. GEORGE MOORE, M.D.

Statement of the Case

No. 1:

At a special board meeting on July 31, 1969, the Medical Staff made a recommendation to the Board of Trustees that staff privileges of Dr. Goerge Moore be terminated due to unprofessional conduct. The board accepted this recommendation at that time on the basis that the recommendation was the result of five years' evaluation of Dr. Moore and repeated complaints to the Executive Committee and Medical Staff about the conduct of Dr. Moore. Dr. Moore was notified at 5:30 p.m., July 31, 1969, of the Board's decision. Attorney George Allison mailed to Dr. Moore written legal notice on August 1, 1969.

No. 2:

Discussion between Mr. Allison, Hospital Attorney, Mr. Martillaro, Dr. Moore's attorney, and the District Judge ended with the Judge granting

hospital privileges to Dr. Moore pending a formal hearing.

No. 3:

On August 20, 1969, a formal letter listing specific charges was sent by certified mail to Dr. Moore. The letter indicated that an administrative hearing would be held on September 11, 1969, prior to making a final decision on the continuance of hospital privileges. At that time the allegations indicated in the letter would be heard and evidence could be presented by both sides.

No. 4:

On August 25, 1969, the board agreed that the administrative hearing be a closed one. On this same date William E. Schultz, Board Chairman, was elected Hearing Officer. Dr. W. R. King, board member, asked to be excused from the hearing, and his request was granted.

No. 5:

At 7:00 p.m. on September 11, 1969, the Board of Trustees met to hold the properly scheduled administrative hearing to consider Dr. George Moore's privileges at the hospital. Mr. Allison asked that the hearing be delayed for a short time in that Dr. Moore and his attorney, Mr. Martillaro, were meeting with the Medical Staff.

Approximately 10:00 p.m., same date, the Medical Staff advised the Board that Dr. Moore had decided to resign, under certain conditions, rather than face an administrative hearing. This recommendation was accepted after discussing the terms of the agreement with both Dr. Moore and his attorney, Mr. Martillaro. Transcript of this meeting is on file.

No. 6:

On September 22, 1969, the Board reviewed the agreement that Mr. Allison had prepared concerning Dr. Moore's probable resignation.

No. 7:

At a special meeting on October 12, 1969, the Board was notified that Dr. Moore refused to sign the agreement originally agreed to by both Dr. Moore and his attorney. The reason given was that some Doctor had prevented Dr. Moore from getting on the staff at a Las Vegas hospital. A new hearing date was tentatively set for November 25, 1969, at this time.

No. 8:

On October 27, 1969, Mr. Allison reported that Dr. Moore again refused to sign the agreement because of the "voluntary resignation, release clause". The Board agreed to dispense with the news release. If Dr. Moore

again refused, the hearing on November 25 would proceed after proper notification by hospital attorney Mr. Allison. Dr. Moore again refused to sign the agreement.

No. 9:

The Administrative hearing concerning the hospital privileges of Dr. Moore began at 7:00 p.m. on November 25, 1969. The hearing continued on December 3, 1969, December 4, 1969, and was concluded on December 6, 1969. Transcripts of the hearing were received by the Hearing Officer on December 27, 1969.

Findings of Fact

No. 1:

Dr. George Moore is a licensed M.D. in Nevada and is a Board certified Ob. Gyn. specialist.

No. 2:

Dr. Moore had been a full-fledged member of the Carson-Tahoe Medical Staff until recently. After the charges were filed against him, he agreed to accept the status of a probationary Doctor until the outcome of the hearing was determined.

No. 3:

The Medical Staff By-Laws outline the procedure for an administrative

hearing and all aspects of the by-laws were adhered to in the development of the hearing and in the hearing itself.

No. 4:

Both the Hospital and Dr. George Moore were represented by legal counsel prior to and during the hearing.

No. 5:

The Medical Staff By-Laws point out that after the report of the Hearing Officer is submitted and subsequent proper discussions have been held that the decision made or adopted by the Board of Trustees shall be final, subject only to court review on the part of either party.

Proposed Decision and Recommendation

On the basis of the hearing each allegation concerning Dr. George Moore's professional conduct is hereby analyzed and comments made accordingly:

No. 1:

Concerning allegations 1 and 2, there was no evidence adduced, and the charge is not sustained.

No. 2:

Concerning allegation number 3 dealing with the patient who was admitted in a state of incomplete

abortion: Evidence presented appeared to be in conflict as to the severity of the patient's hemorrhaging. Although there is general agreement among Doctors to inform each other in advance to cover for one another, this may not always be the case in an emergency. Dr. Moore evidently felt that he was not up to seeing his patient and that is why he had the nurse contact Dr. Stewart. Evidence did not allude to anything reverse enough to warrant positive action on the part of the Board.

No. 3:

Concerning allegation number 4, no evidence was adduced, and the charge is not sustained.

No. 4:

Concerning allegation number 5, with reference to profane and abusive language: Evidence indicated that this is not necessarily rare around a hospital. Witnesses testified that they had heard language of this type but that they didn't expect Dr. Moore with his professional standing to use it. It appeared more shocking than offensive. Evidence appears in such conflict that it is not of the clear and convincing quality necessary to sustain the charge.

No. 5:

Concerning allegation number 6

relating to the inducement of a premature baby: Testimony was given both to indicate that the baby was premature and that it was of full term or so close that it was a matter of medical judgment as to whether or not delivery was in order. At the time of this incident Dr. George Moore was called before the Medical Staff to explain his actions. Evidence was presented to the effect that the Medical Staff agreed that probably an error in medical judgment occurred, and so the Medical Staff decided to take no further action at that time. On the basis of the action taken at that time it appears that if we were to react now to something that has been settled previously that we would be out of order.

No. 6:

Concerning allegation number 7 dealing with the administering of a spinal anesthetic: Reliable evidence of great quantity was presented to show that the action taken by Dr. Moore did not adhere to the practices of this hospital. Standards need not be in writing in all situations, the very fact that the procedure used by Dr. Moore in this situation was different than he or any other Doctor on this staff has ever used is evidence enough that Dr. Moore was in error. The evidence presented here does support and sustain the charge.

No. 7:

Concerning allegations number 8 and 12 relating to the performing of a circumcision on an infant. Evidence clearly indicates that Dr. Moore did things differently at this time than he had ever done before. The evidence did not clearly indicate why Dr. Moore had difficulty other than to state that his eyes were blurred and that his hands were sluggish. Evidence indicated that even though things were done differently the nurses readily assisted, and the patient was not duly harmed. Although things were done differently, no real evidence was adduced, and the charge is not sustained.

No. 8:

Concerning allegation number 9 relating to the removal of sutures from a patient. Evidence indicated that here again Dr. Moore had difficulty in doing a procedure that had not caused him trouble in previous similar situations. Evidence in this situation alone is not sufficient to sustain the charge.

No. 9:

Concerning allegation number 10, no evidence was adduced, and the charge is not sustained.

No. 10:

Concerning allegation number 11

relating to the cancelling of surgery. Evidence clearly indicated that Dr. George Moore appeared at the hospital to perform surgery when he was in no condition to do it. This Dr. Moore admitted to himself when he abided by the decision of his fellow doctors without comment. Had not Dr. Moore been refrained from doing surgery, he probably would have gone ahead. There naturally can be no evidence to indicate what might have happened. Evidence is ample in this situation to support and sustain the charge.

Evidence clearly indicates that the allegations against Dr. Moore of the most serious nature seemed to occur within a short span of time, namely, three days. Two of the charges that are supported by evidence occurred during this time as well as others that did not appear to follow normal procedure but were not severe enough to sustain the charge. The Board of Trustees have the responsibility for providing the highest type of medical service to this community through its medical staff. If the Board did anything less, it would be derelict in its duties and responsibilities. Whenever evidence is properly and legally presented to show that any member of the Medical Staff jeopardizes this type of service it is the responsibility of the Board to act accordingly.

Therefore, it is the recommendation of the Hearing Officer, that since

evidence does support and sustain two of the charges, that the privilege to practice medicine in the Carson-Tahoe Hospital by Dr. George Moore be denied. To do anything less would be dereliction of duty on the part of those elected by the public to serve its best interests.

Respectfully submitted

/s/ William E. Schultz

William E. Schultz
Hearing Officer

February 20, 1970

Dr. George L. Moore
1501 No. Carson Street
Suite 210
Carson City, Nevada 89701

Dear Dr. Moore:

This is to inform you that the Board of Trustees, Carson-Tahoe Hospital, has received and duly considered the findings of fact and proposed decision and recommendations of William E. Schultz, the duly appointed Hearing Officer, in the matter of the termination of your Medical Staff privileges.

The Board of Trustees on February 19, 1970, based upon the record including the transcript of the hearing and all evidence submitted therein, voted to adopt without change the findings of fact and proposed decision and recommendation of the Hearing Officer; attached hereto as Exhibit "A" is the findings of fact and proposed decision and recommendations of the Hearing Officer.

Therefore, it is the final decision of the Board of Trustees of Carson-Tahoe Hospital that your Medical Staff privileges be and hereby are terminated, effective immediately.

Sincerely,

/s/ William E. Schultz
William E. Schultz
Chairman, Board Trustees

xxx

29 Ruby Lane
Carson City, Nevada
February 22, 1970

William E. Schultz
Hearing Officer
In the Case of George Moore, M.D.
Carson-Tahoe Hospital
Carson City, Nevada

Dear Bill:

This is to record my dissent from the decision made February 19, 1970 by the majority of the members of the Board hearing the case of George Moore, M.D. I expressed my dissent from the proposed decision and my objection to the terminology of the report at the regular meeting of the Board of Trustees on January 26, 1970.

In my opinion a much more serious allegation than those brought against Dr. Moore in this hearing had previously been brought against him, at the time the Board initially acted to terminate his hospital privileges. At that time it was indicated that there was something wrong with Dr. Moore which might prevent him from performing competently. Had this charge been made and proved in the hearing, I would have considered it adequate to sustain the action finally taken by the Board. This charge and others previously made were, however, not included amongst those brought against Dr. Moore in this

hearing. I can only assume that they were adjudged either untrue or not provable by the hospital's attorney and that they should therefore be totally disregarded in the judgment of this hearing.

I agree with the recommendations of the Hearing Officer regarding allegations 1, 2, 3, 4, 5, 6, 8, 9, 10 and 12 that they be disregarded.

I disagree with the conclusions of the Hearing Officer regarding allegations 7 and 11, in which he found evidence maintaining the charges and justifying the action which was later taken. My conclusions were as follows:

Allegation 7, procedure in giving a spinal anesthetic:

Evidence and testimony were presented which were sufficient to convince me that the wearing of gloves is not essential to the maintenance of sterility in administering a spinal anesthetic and that the wearing of gloves does not insure the sterility of the procedure. Testimony regarding other shortcomings of the procedure used was conflicting and inconclusive. The statement by the Hearing Officer that Dr. Moore's procedure in this instance was "different than he or any other doctor on this staff has ever used" is incorrect since Dr. Moore himself stated that he had on previous occasions not used gloves. Other

elements brought out in testimony which seem of significance to me are: (1) Dr. Moore is notably more experienced in the particular mechanics involved than any of the others who testified, and (2) no damage to the patient resulted.

My conclusion, after listening to the testimony, is that as a general rule gloves should be worn in administering spinal anesthetics, primarily as an additional safety factor which can be simply applied. I would not, however, wish to be party to establishment of an arbitrary rule which meant automatic dismissal of one who did not wear them. It seems to me that our doctors should be guided in such matters by their own best medical judgment in the light of particular circumstances rather than by arbitrary rules imposed by the Board of Trustees. The fact that such rules, as in this case, need not be clearly stated and in writing prior to their application seems to me to make them doubly dangerous in inhibiting doctors from the use of their best professional judgment.

Allegation 11, regarding cancellation of surgery.

The only clear conclusion that I was able to reach in this connection was that Dr. Moore was willing to abide by the judgment of two of his peers that he should not perform surgery at a particular time. I do not believe that

this is derogatory to Dr. Moore. I accept the doctor's explanation of the reason for his bloated appearance, which was in no way impeached, as probably resulting from too much sleep. The remainder of the Hearing Officers conclusions appear to be entirely conjectural and insufficient to justify the action recommended and taken.

Respectfully submitted,

/s/ J. W. Littlefield

J. W. Littlefield, Trustee

APPENDIX D

Nevada Revised Statutes 630.030 "Unprofessional conduct" defined. As used in this chapter, "unprofessional conduct" means:

1. Obtaining a certificate upon fraudulent credentials, or gross misrepresentation.

2. Procuring, or aiding or abetting in procuring, criminal abortion.

3. Obtaining a fee on assurance that a manifestly incurable disease can be permanently cured.

4. Advertising medical business in which grossly improbable statements are made.

5. Any advertising of any medicine or any means whereby the monthly periods of women can be regulated, or menses reestablished if suppressed.

6. Willful disobedience of the law, or of the rules and regulations of the state board of health.

7. Conviction of any offense involving moral turpitude, or the conviction of a felony. The record of the conviction shall be conclusive evidence of unprofessional conduct.

8. Administering, dispensing or prescribing any narcotic drug (opium, coca leaves, cannabis or any preparation or derivative of any of them or any other habit-forming drug) otherwise than in the course of legitimate professional practice and for the prevention, alleviation or cure of disease or for the relief of suffering, and not primarily for the purpose of catering to the cravings of an addict.

9. Conviction or violation of any federal or state law regulating the possession, distribution or use of any narcotic drug aforesaid. The record of conviction shall be conclusive evidence of such unprofessional conduct.

10. Habitual intemperance or excessive use of cocaine, morphine, codeine, opium, heroin, alpha eucaine, beta eucaine, novocaine or chloral hydrate, or any of the salts, derivatives or compounds of the foregoing substances, or of alcohol or alcoholic beverages, or of any other habit-forming drug or substance.

11. Conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public.

12. Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any

provision or term of this chapter.

13. Employing, directly or indirectly, any suspended or unlicensed practitioner in the practice of any system or mode of treating the sick or afflicted, or the aiding or abetting of any unlicensed person to practice medicine as defined in this chapter.

14. Gross negligence in the practice of any phase of the profession.

15. The adjudication of insanity by a court of competent jurisdiction. The record of the adjudication, judgment or order of commitment is conclusive evidence of such unprofessional conduct.

APPENDIX E

IN THE SUPREME COURT
OF THE STATE OF NEVADA

GEORGE L. MOORE, Appellant, vs. THE BOARD OF TRUSTEES OF CARSON-TAHOE HOSPITAL, a Public Hospital, and WILLIAM SCHULTZ, WILLIAM YOUNG, GENE GOLD, JOSEPH LITTLEFIELD and LOTTIE SCOTT, constituting the members of said Board, Respondents.	)	No. 6684

APPELLANT'S OPENING BRIEF

* * * * * *

LEGAL ISSUES PRESENTED

1. MAY A PUBLIC HOSPITAL TERMINATE MEDICAL STAFF PRIVILEGES OF A PHYSICIAN WHO MEETS ALL ELIGIBILITY REQUIREMENTS FOR SUCH STAFF PRIVILEGES ANL WHO HAS NOT VIOLATED ANY BY-LAW PROVISION OR REGULATION OF THAT PUBLIC

HOSPITAL?

2. IS A TERMINATION OF MEDICAL STAFF PRIVILEGES ARBITRARY, CAPRICIOUS AND DISCRIMINATORY ON THE GROUNDS OF "UNPROFESSIONAL CONDUCT" WHEN "UNPROFESSIONAL CONDUCT" IS NOT DEFINED IN THE HOSPITAL BY-LAWS OR RULES AND REGULATIONS?

A. IS SUCH AN UNDEFINED STANDARD SO VAGUE AND AMBIGUOUS AS TO CONSITUTE AN UNCONSTITUTIONAL BASIS TO DEPRIVE A PHYSICIAN OF A NECESSARY PRIVILEGE OF PRACTICING HIS PROFESSION?

B. IN THE ABSENCE OF ANY DEFINITION OF "UNPROFESSIONAL CONDUCT" IN THE HOSPITAL BY-LAWS OR REGULATIONS, MUST THE COURT LOOK TO THE DEFINITION OF SUCH TERMINOLOGY IN THE MEDICAL PRACTICES ACT OF THE NEVADA REVISED STATUTES?

3. EVEN ASSUMING THAT "UNPROFESSIONAL CONDUCT" CAN BE DETERMINED ABSENT ANY STANDARD, DOES THE UTILIZATION OF A CLINICAL TECHNIQUE WHICH DIFFERS FROM THAT TECHNIQUE USED BY OTHER PHYSICIANS IN THE SAME HOSPITAL CONSTITUTE SUFFICIENT GROUNDS FOR REVOCATION OF ALL STAFF PRIVILEGES?

4. AGAIN ASSUMING THAT "UNPROFESSIONAL CONDUCT" CAN BE DETERMINED ABSENT ANY STANDARD, DOES THE JUDGMENT OF TWO STAFF PHYSICIANS THAT APPELLANT

WAS NOT PHYSICALLY AND MENTALLY PREPARED TO CONDUCT A SCHEDULED SURGERY, SUCH JUDGMENT BEING ACQUIESED IN BY APPELLANT, CONSTITUTE CAUSE FOR REVOCATION OF ALL STAFF PRIVILEGES?

* * * * * *

IN THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GEORGE L. MOORE, M.D.,	No. 29946
Plaintiff,	
vs.	
BOARD OF TRUSTEES, CARSON-TAHOE HOSPITAL,	
Defendant.	

COMPLAINT

COMES NOW the plaintiff and alleges as follows:

* * * * * *

5. That the charges pending against

him are cumulative and vague, and to have a hearing on them as charges would result in an impossible burden on plaintiff, resulting in a violation of due process of law, equal protection, and a violation of his civil rights, and furthermore, that three of the said charges are within the restrictions set forth in NRS 11.190, being the Statute of Limitations.

* * * * * *

IN THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GEORGE L. MOORE, Petitioner, vs. THE BOARD OF TRUSTEES OF CARSON-TAHOE HOSPITAL, A PUBLIC HOSPITAL, AND WILLIAM SCHULTZ, WILLIAM YOUNG, GENE GOLD, JOSEPH LITTLEFIELD, and LOTTIE SCOTT, constituting the Members of said Board, Respondents.	No. 29957

PETITION FOR WRIT OF MANDAMUS

COMES NOW the Petitioner above named and respectfully shows this Court as follows:

* * * * * *

5. That the Respondents have no just cause for the summary and arbitrary dismissal aforesaid, and to exclude Petitioner from the medical staff of said Hospital constitutes an abuse of discretion and an excess of jurisdiction on the part of Respondents.

6. That the Respondents have promulgated no standards of conduct for medical staff members and have passed no rules and regulations concerning the conduct of the members of the said Hospital staff, but rather have acted arbitrarily and capriciously and without just cause in the dismissal of Petitioner.

* * * * * *

8. That Petitioner has a right to function as a member of the medical staff of said public hospital.

* * * * * *

IN THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

GEORGE L. MOORE, M.D., Plaintiff, vs. BOARD OF TRUSTEES, CARSON-TAHOE HOSPITAL, Defendant,	No. 29476

* * * * * *

POINTS AND AUTHORITIES

1. The Board of Trustees must adopt proper standards governing the conduct of physicians and establishing what shall and shall not be grounds for dismissal, and not merely charge that any previously undefined conduct shall be "unprofessional conduct" and arbitrary grounds for dismissal.

APPENDIX F

IN THE SUPREME COURT
OF THE STATE OF NEVADA

GEORGE L. MOORE, Appellant, vs. THE BOARD OF TRUSTEES OF CARSON-TAHOE HOSPITAL, a public hospital, and WILLIAM SCHULTZ, WILLIAM YOUNG, GENE GOLD, JOSEPH LITTLEFIELD and MARY GIALY, constituting the members of said Board, Respondents.	No. 6684

ORDER

Good cause appearing,

IT IS ORDERED that:

(1) Rehearing be denied;

(2) The stay order of July 6, 1971 is hereby vacated; and

(3) The remittitur shall issue forthwith.

Dated: May 3, 1972.

/s/ Zenoff, C.J.

/s/ Batjer, J.

/s/ Mowbray, J.

CC: Counsel of record